



## Administrative Assistant to the Selectmen

Stu Marckoon  
606 Douglas Hwy  
Lamoine, ME 04605  
(207) 667-2242

[town@lamoine-me.gov](mailto:town@lamoine-me.gov)

To: Board of Appeals  
Code Enforcement Officer  
Michael Wight  
From: Stu Marckoon  
Re: Questions from Appeals Board Chair 1-25-16  
Date: January 26, 2015

Thank you for the list of 5-questions received via e-mail overnight night. Most of these questions are beyond the scope of my job, but I can route them to the proper person.

1. a. **How is the set back distance figured, i.e, from the center of the road right of way and then so many feet to the closest part of the building. And at a right angle to the closest road (ROW) point. (A sample drawing maybe easiest to absorb)**

Answer: I will ask that the Code Enforcement Officer offer some explanation on measurement. The Building and Land Use Ordinance language reads as follows:

Lot Standards & Structure Setback Table	Residential Zone (RZ)	Development Zone (DZ)	Rural & Agricultural Zone (RAZ)
Minimum Front Yard Setback from the road right of way <sup>5</sup>	50	50	50

Footnote # 5 does not appear to have anything to do with the "front yard setback", because it read as follows: *<sup>5</sup>Auxiliary features of building and structures, such as chimneys, towers, ventilators, and spires may exceed permitted height of structure, unless a greater setback is required by other provisions of this ordinance.*

Section 5 B of the BLUO reads:

### **B. Locating street rights-of-way:**

To locate the edge of a street right-of-way when no survey exists, find the apparent center of the traveled portion of the road and measure 25 feet to the assumed edge of the right-of-way.

The BLUO defines setback as follows: Setback: The minimum required horizontal distance from a lot line or other feature to the nearest part of a building, including porches, steps, and railings.

The BLUO defines right of way as follows: Right-of-Way: All public or private roads and streets, state and federal highways, private ways (now called public

easements), and public land reservations for the purpose of public access, including utility rights-of-way.

(I will print off copies of the Ordinance for the Board Meeting).

**b. Who measured the distance to the foundation? How many persons measured the distance? How many times was the distance measured. There is a saying in carpentry: measure twice and cut once.**

We have no record of any town official measuring the distance to the foundation. I have checked the e-mail I sent to the Code Enforcement Officer between October 2015 and today, and find no request to conduct a foundation setback inspection. We are pretty good about relaying messages to the CEO through this office, generally by e-mail. I am not sure if Mr. Wight spoke directly with Mr. Billings about this. The CEO may have more to offer on this.

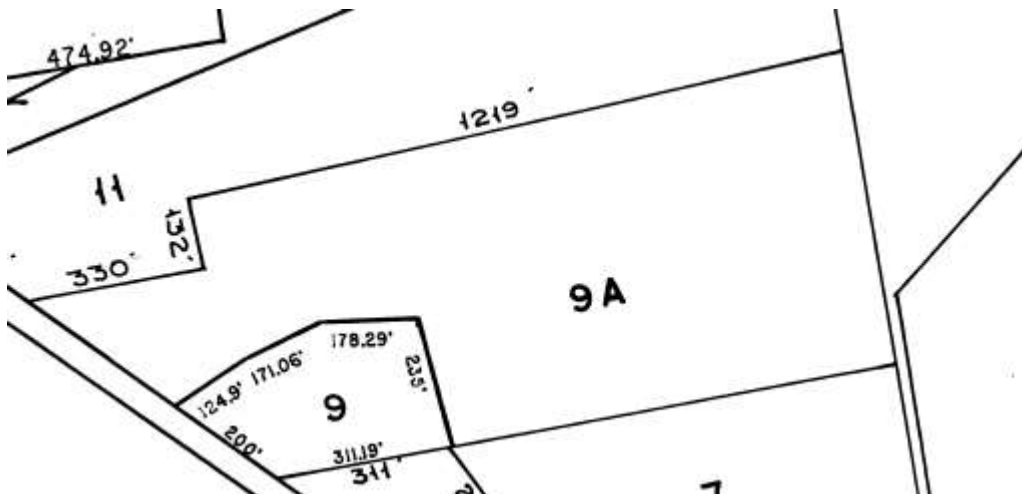
The first time I became aware of the problem was a few weeks ago when Mr. Wight came into the office and asked about how to handle the issue, as a bank surveyor found the discrepancy while conducting a mortgage inspection survey.

**2. When did the Lamoine CEO check out the distance? Was it before the start of the construction or during the construction.**

Again, to my knowledge there was no request for a setback inspection. The CEO may have more information to offer. A notice of violation was issued on January 6, 2016.

**3. Since I was informed tonight at the conclusion of the meeting, there is a survey of the property showing distances. I would like to have this available for the Board.**

We are not aware that any such survey exists. To my knowledge it was not submitted as part of the building permit application process. Perhaps Mr. Wight has a copy that he would provide. I have printed the deed from the previous owner. Here is a snapshot of the tax map of the lot (Map 9 Lot 9A)



**4. Were the owners aware of our Ordinance and the set back requirements? if, no why would they not check with the CEO or Town Office.**

Town staff would not have any knowledge about this question.

**5. How much property is involved in the parcel? If a waiver is granted, would it affect how the remainder of the property may be developed?**

According to our property tax record, Map 9 Lot 9A is 13.8 acre parcel. If you grant a "variance", that would have to be recorded at the Hancock County Registry of Deeds. As for the impact on the rest of the property, that calls for speculation that town staff is not able to offer in general.

In regard to a variance request, I offer the following from the Maine Municipal Association Land Use Appeals Manual:

### **Request for Variance "After the Fact"**

A person who commits a violation of an ordinance requirement, such as a zoning setback, sometimes will seek a variance after-the-fact as a way to correct the violation. Normally an ordinance violation must be resolved through regular code enforcement channels rather than through a variance granted by the board of appeals. If a landowner does apply for a variance after-the-fact, the board should review the request without taking into account that the structure has been built. The board should determine whether the applicant would have been entitled to a variance if he/she had come to the board before the fact and only grant a variance if the applicant satisfies all prongs of the undue hardship test and only to the extent needed. Usually an after-the-fact application is the result of a builder's error where the building could have conformed to the ordinance requirements but someone mismeasured. In that case the hardship is self-created and the variance should be denied. It then becomes an enforcement issue to get the building moved or altered so that it conforms. *Rowe v. City of South Portland*, 1999 ME 81, 730 A.2d 673.

I have printed out the Rowe v. City of South Portland decision in case you might find that useful.

Respectfully submitted,

Stu Marckoon, Administrative Assistant to the Selectmen